IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CrRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1281 OF1994

Shri L.K. Mansukhani ..Petitioner
V/s
1. Shri Sanjay Pande and others .. Respondents.

Mr. S.R. Chitnis for the petitioner

CORAM : S.C. DHARMADHIKARI, J.

DATE : 13TH OCTOBER, 2006.

P.C.

. This petition was to be heard along with another petition. That petition came to be disposed of by me because I was informed that the records in the concerned police station were destroyed on account of floods. An affidavit was filed to such effect by the competent officer from the concerned police station.

2. As far as this Writ Petition is concerned, it reached hearing and final disposal and repeatedly adjourned. It has been brought to my notice that prior to this matter placed before me, on 5 or 6 occasions it was placed before the earlier Courts as well. I was

informed that the records in this case are also not available. However, time was taken to ascertain whether they were destroyed in the floods or otherwise.

3. Now the affidavit has been filed pointing out that the said records are not traceable. A statement of the Record Keeper has also been recorded. The affidavit filed by Shri Siraj Shaikh on 4th October, 2006 is to the following effect:-

> "I say that I am filing this affidavit on the basis of personal knowledge and also, on the basis of the information available in the office records pertaining to the above matter."
>
> I say that after due search and seizure, papers of the present matter are not traceable in the record of police station. The statement of record-keeper Shri Vitthal Dinkar Dhumaskar, Police Constable, Buckle No. 34376 of Nirmal Nagar Police Station has been recorded to that effect.

4. The plea in the petition is to quash a prosecution lodged by D.N. Nagar Police station in A.L.C. No. 1589/1997 on the file of the Metropolitan Magistrate 44th Court, Andheri (W). The offence pertains to the video game machines. However, since the records in the police station are not traceable, the

case before the Metropolitan Magistrate even if not quashed cannot proceed. In such circumstances, and in the peculiar facts of this case, there is no impediment in exercise of powers under section 482 of Cr.P.C.. In the peculiar facts and circumstances of this case and without deciding any larger issue on the short ground alone, Rule is made absolute in terms of prayer clause (a).

(S.C. DHARMADHIKARI, J.)